IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARON K. ADAMS	:	**CIVIL ACTION**
	:	
vs.	:	
	:	
WILLIAM J. JONES, Parole Officer; ROBERT METHIE, Parole Officer; ALAN THOMPSON, Parole Officer	:	**NO. 96-4377**

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 30th day of March, 1999, upon consideration of the Motion for Summary Judgment of Defendants William J. Jones, Robert Methie, and Alan Thompson (Document No. 65, filed June 23, 1998), and Plaintiff's Memorandum of Law and Objections to the Motion for Summary Judgment of Defendants William J. Jones, Robert Methie, and Alan Thompson (Document No. 68, filed July 17, 1998), for the reasons set forth in the accompanying Memorandum, **IT IS ORDERED** that the Motion for Summary Judgment of Defendants William J. Jones, Robert Methie, and Alan Thompson is **GRANTED** and Judgment is **ENTERED** in favor of defendants William J. Jones, Robert Methie, and Alan Thompson and against plaintiff. Baron K. Adams.

MEMORANDUM

A. Procedural Background

On June 14, 1996, plaintiff Baron K. Adams filed a Complaint under 42 U.S.C. § 1983 in which he named as defendants Delaware County Prison Warden George Hill, plaintiff's former attorney Rolfe C. Marsh, and the Unknown Superintendent of the Delaware County Office of

Adult Probation and Parole Services. In an Amended Complaint, filed May 12, 1997, plaintiff added Delaware County Office of Adult Probation and Parole Services Officers William J. Jones, James C. Costello, Robert Methie, and Alan Thompson as defendants.

The action against three of the named defendants has been dismissed - Rolfe Marsh, Esquire, by Order dated December 11, 1996 and, with the consent of all parties, James C. Costello and George Hill, by Order dated June 9, 1998. The Unknown Superintendent of Delaware County Office of Adult Probation and Parole Services was stricken as a defendant by Order dated June 11, 1997. The remaining defendants, William J. Jones, Robert Methie, and Alan Thompson, now move for summary judgment.

B. Factual Background

On January 8, 1990, plaintiff was sentenced to serve six (6) to twenty-four (24) months, less one day, at the Delaware County Prison for the crime of robbery. As part of the sentence plaintiff was ordered to pay an assessment of $770 for court costs and $1,200 in restitution, for a total of $1,970. Because plaintiff had been in custody from September 9, 1989, the effective date of his sentence was September 9, 1989. The minimum sentence expired on March 9, 1990; the maximum sentence expired on September 8, 1991.

Plaintiff was released on parole on March 9, 1990, and his parole was transferred for supervision purposes from the Delaware County Office of Adult Probation and Parole Services ("Delaware County Parole Office") to the Philadelphia County Department of Probation and Parole ("Philadelphia County Parole Office"). Under the terms and conditions of his parole, plaintiff was required to reside in Philadelphia with his mother and to actively seek employment,

he was not to change his address or phone number without the written permission of his Parole Officer, Steven Miller of the Philadelphia County Parole Office, and he was required to pay the $1,970 in court costs and restitution directly to the Delaware County Court Financial Services Office.

On November 10, 1990, while still on parole, plaintiff was arrested in Scioto County, Ohio on a charge of robbery; he was sentenced to a term of incarceration of three (3) to ten (10) years after pleading guilty to that charge. Plaintiff states that some time after his arrest he called his mother and asked her to notify Mr. Miller of the arrest and of his location.

On June 25, 1991, while plaintiff was incarcerated in Ohio, the Delaware County Parole Office sent a letter to plaintiff's Philadelphia address regarding the payment of his outstanding costs and restitution, which were to be paid in full by September 8, 1991. Plaintiff was instructed in this letter to report to the Delaware County Office on July 11, 1991, to pay at least half of the court costs and restitution, and that a failure to do so would constitute a violation of his parole. This letter was returned to sender by the Post Office, which provided another address; a subsequent certified mailing to the new address was likewise returned to sender.

On September 4, 1991, defendant Jones and Officer James C. Costello of the Delaware County Parole Office prepared and filed a Request for Bench Warrant for plaintiff's arrest, citing plaintiff's failure to attend the July 11 meeting and his unauthorized absence from his designated Philadelphia address. Judge Clement J. McGovern issued a bench warrant on September 13, 1991. Because the Delaware County Parole Office had no knowledge of plaintiff's whereabouts, no detainer was lodged with the Ohio correctional system pursuant to this warrant.

After serving his time in Ohio, plaintiff was released on parole on January 24, 1994. He

received an out-of-state parole and returned to his mother's home in Philadelphia. Before his release, however, the Ohio authorities ran checks to determine whether there were any outstanding warrants for plaintiff's arrest or "holders." Those checks disclosed no warrants or "holders."

In August of 1994, plaintiff was once again arrested in Delaware County on charges of robbery, simple assault, aggravated assault, and theft by unlawful taking. The arresting officer informed plaintiff that a Bench Warrant had been issued for him in September, 1991, and executed that warrant. A Gagnon I hearing[1] was held on plaintiff's parole violation on or about August 31, 1994. At that hearing, plaintiff admitted to parole violations including failing to report as directed, failing to notify the Delaware County parole officer of a change of address, a new arrest, and failure to pay court costs and restitution. A Gagnon II Hearing was held on March 24, 1995, at which plaintiff was found guilty of parole violations and was sentenced to serve out the remainder of his sentence for the January 8, 1990 conviction, which amounted to approximately sixteen (16) months. In June, 1996, plaintiff was paroled from Delaware County Prison and returned to Ohio for a parole revocation hearing; plaintiff is presently an inmate in the Chillicothe Correctional Institution in Chillicothe, Ohio.

Plaintiff's Amended Complaint contains three counts under 42 U.S.C. § 1983. In Count I it is alleged that plaintiff's Eighth Amendment rights were violated when plaintiff, because of the

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[1]A defendant is generally entitled to two separate hearings prior to revocation of parole or probation. Gagnon v. Scarpelli, 411 U.S. 778 (1973). The purpose of the first (Gagnon I) hearing is to "ensure against detention on allegations of violation that have no foundation of probable cause." Commonwealth v. Perry, 385 A.2d 518, 520 (Pa. Super. Ct. 1978). The purpose of the second (Gagnon II) hearing is to determine whether facts exist to justify revocation of parole or probation. Id.

"knowing and intelligent" deceptions allegedly engaged in by defendants William J. Jones, Robert Methie, and Alan Thompson, was subjected to a term of incarceration beyond that to which he had been sentenced. Plaintiff alleges in Count II that his Fourteenth Amendment rights to substantive and procedural due process were violated when defendants, Jones, Methie, and Thompson, acting with "deliberate indifference to a serious risk of harm" to plaintiff, allowed false charges to be brought against him and withheld information from the court considering plaintiff's parole violation. Finally, in Count III, plaintiff alleges that the holding of his parole revocation hearings outside of the time period allowed in the statutory framework, and his subsequent incarceration for an allegedly expired sentence, was the result of the withholding of "documentation" from the Gagnon hearing court by defendants, Jones, Methie, and Thompson, a deception which plaintiff alleges violated his Fourteenth Amendment rights.

As a result of the alleged violations of his constitutional rights, plaintiff seeks "general compensatory damages" in an unspecified amount, payments of costs in the amount of $34,275, punitive damages in the amount of $340,275, and unspecified "declaratory and injunctive" relief. On May 13, 1998, this Court denied the motions of defendants Jones, Methie, and Thompson to dismiss plaintiff's Amended Complaint.[2]

In the instant motion, defendants Jones, Methie, and Thompson move for summary judgment against plaintiff on the following grounds: (1) plaintiff has failed to establish that defendants violated his rights under the Eighth Amendment, because his detention was justified; (2) plaintiff has failed to establish that defendants violated his due process rights under the

[2]Adams v. Costello, 1998 WL 242600 (E.D. Pa. May 13, 1998).

Fourteenth Amendment, because he was accorded a speedy Parole Revocation Hearing as soon as defendants were aware of his location; and (3) defendants are entitled to qualified immunity because plaintiff has failed to show that defendants knowingly violated any of his rights which were clearly established at the time of the relevant conduct.

C. Discussion

Defendants have filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. When reviewing a summary judgment motion, a court must grant the motion if it finds that the pleadings, together with depositions, admissions, answers, interrogatories, and affidavits present "no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Because in this case the non-moving party bears the burden of proof at trial, the moving party need only show that there is a lack of any evidence to support the plaintiff's case. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). Once a defendant demonstrates a lack of evidence, plaintiff may not rest on the complaint, but must come forward with facts sufficient for a jury to return a verdict in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). At that point the Court must determine whether there is "sufficient disagreement to require submission to a jury or whether [the evidence] is so one-sided that one party must prevail as a matter of law." Id. at 251-52. In doing so, "the court must view all evidence in favor of the non-moving party . . . . Additionally, all doubts must be resolved in favor of the non-moving party." Securities and Exchange Commission v. Hughes Capital Corp., 124 F.3d 449, 452 (3d Cir. 1997)(citations omitted).

Plaintiff has failed to present any facts upon which a jury could return a verdict in his

favor. Plaintiff's claim for damages stemming from his allegedly unconstitutional incarceration must be dismissed as not cognizable before this Court under the rule of Heck v. Humphrey, 512 U.S. 477 (1994). Even viewing the remaining claims in a light most favorable to plaintiff as the non-moving party, plaintiff has failed to submit any evidence of a constitutional violation by defendants, nor has he come forward with any facts which would overcome the defense of qualified immunity. As a result, defendants' motion for summary judgment must be granted.

1. Cognizability of the § 1983 Action for Unlawful Incarceration

Plaintiff's claims for damages stemming from his allegedly unlawful incarceration are not cognizable under 42 U.S.C. § 1983.[3] This result is mandated by the holding of the Supreme Court in Heck v. Humphrey, 512 U.S. 477 (1994). Although neither party addressed the issue, "[i]t is too elementary to warrant citation of authority that a court has an obligation to inquire sua sponte into its subject matter jurisdiction, and to proceed no further if such jurisdiction is wanting." In re Recticel Foam Corp., 859 F.2d 1000, 1002 (1st Cir. 1988).

In Heck, the Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

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[3]Black's Law Dictionary defines the term "cognizable" to mean, "Capable of being tried or examined before a designated tribunal; within jurisdiction of court or power given to court to adjudicate controversy." Black's Law Dictionary 259 (6th ed. 1990) (emphasis added). See also F.D.I.C. v. Meyer, 510 U.S. 471, 476 (1994) (stating that this is what "cognizable" ordinarily means).

Heck, 512 U.S. at 487 (footnote omitted). The Heck Court ruled that habeas corpus was the only permitted mode of federal collateral attack on a state conviction. Id. at 481-82. It is also well established that a § 1983 action contending that a state parole revocation was constitutionally invalid challenges the "fact or duration of [the plaintiff's] confinement," and is therefore a collateral attack on a state conviction. Id. at 481; accord White v. Gittens, 121 F.3d 803 (1st Cir. 1997); Crow v. Penry, 102 F.3d 1086, 1087 (10th Cir. 1996); Littles v. Board of Pardons & Parole Div., 68 F.2d 122, 123 (5th Cir. 1995)(per curiam); cf. Edwards v. Balisok, 117 S.Ct. 1584 (1997) (applying the Heck rule to a prisoner's deprivation of good-time credits in a state prison disciplinary proceeding); Schafer v. Moore, 45 F.3d 43, 45 (8th Cir. 1995) (per curiam) (applying the Heck rule to a state decision to deny parole).

Plaintiff claims in his Amended Complaint that his parole revocation violated the Due Process Clause of the Fourteenth Amendment and gives rise to a cause of action under § 1983. A favorable decision in this § 1983 proceeding would necessarily call into question the validity of the state's decree revoking his parole and ordering him back to prison. Heck therefore applies, and the § 1983 action is not cognizable in this court unless the parole revocation "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck, 512 U.S. at 487.

The Court has examined the records of all proceedings before the Delaware County court relating to plaintiff, both in Delaware County Case No. 6896-89 and No. 3355-94.[4] No court has

[4]A district court deciding either a Rule 12(b)(6) motion or a motion for summary judgment is entitled to take judicial notice of the factual record of a prior proceeding. Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 416 & n.3 (3d Cir. 1988); see also

ever declared plaintiff's sentence for parole violation in Commonwealth v. Baron Adams invalid, nor has any state or federal authority ever called the sentence into doubt in any way. Although plaintiff filed a petition for habeas corpus relief in the state court, on April 11, 1996, at plaintiff's request, that motion was treated as a petition for early parole at the May 16, 1996 hearing before Judge Clement J. McGovern, and was dismissed. (Record of Hr'g, May 16, 1996, at 3-4). Because the revocation of plaintiff's parole, and his resulting incarceration, have never been reversed, expunged, or declared invalid as required under Heck, plaintiff's claims for damages under § 1983 arising out of such incarceration are not cognizable. See White, 121 F.3d at 806-7. The Court therefore must grant defendants' motion for summary judgment as to all claims that the incarceration was unlawful.

Count I of plaintiff's Amended Complaint alleges that defendants violated his civil rights under the Eighth Amendment by wrongfully subjecting him to an unwarranted term of incarceration. Amended Complaint at 5-7. The Eighth Amendment prohibits any punishment which violates civilized standards of humanity and decency. Young v. Quinlan, 960 F.2d 351, 359 (3d Cir. 1992) (emphasis added). Thus, because plaintiff's claims that his punishment was unlawful are barred under the rule of Heck, no Eighth Amendment violation on the part of

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Senior Loiza Corp. v. Vento Development Corp., 760 F.2d 20, 25 (1st Cir. 1985) (district court may properly notice facts set forth in appellate opinion regarding same party in related case) (citing Shuttlesworth v. Birmingham, 394 U.S. 147, 157 (1969)); Pache v. Wallace, Civ. No. 93-5164, 1995 WL 118457, at *2 (E.D. Pa. March 20, 1995), aff'd, 72 F.2d 123 (3d Cir. 1995) (district courts are entitled to take judicial notice of public records in considering a motion for dismissal or motion for judgment on the pleadings); Taha v. I.N.S., 828 F. Supp. 362, 364 n.6 (E.D. Pa. 1993); see also Iacaponi v. New Amsterdam Cas. Co., 379 F.2d 311, 312 (3d Cir. 1967) (affirming district court which took judicial notice of state court proceedings and dismissed action on basis of res judicata).

defendants can be established. Insofar as Counts II and II seek relief based on the unlawfulness of plaintiff's incarceration, they, too, are barred under Heck and the motion for summary judgment must be granted as to any such claims.

2. Plaintiff's Fourteenth Amendment Due Process Claims

Counts I, II and III of plaintiff's Amended Complaint contain allegations that defendants filed a warrant, the Bench Warrant of September 13, 1991, knowing that the sentence had "expired" on September 9, 1991; that defendant parole officers concealed this information from plaintiff and from the court at the Gagnon I hearing; and that as a result of defendants' misconduct the Gagnon I and II hearings were held beyond a reasonable time for such hearings. Amended Complaint at 5-8. Plaintiff states that defendants' actions constitute a violation of his Eighth Amendment right to be free from cruel and unusual punishment (Count I), as well as his Fourteenth Amendment rights to substantive and procedural due process (Counts II and III).

As discussed in section 1, supra, plaintiff's claims that his incarceration was unlawful are not cognizable before this Court under the rule of Heck v. Humphrey, 512 U.S. 477 (1994). However, plaintiff's claim that defendants violated his civil right to due process under the Fourteenth Amendment in the execution of the Bench Warrant and the scheduling of the Gagnon hearings state an independent basis for a § 1983 action. In this section the Court will examine whether defendants' motion for summary judgment should be granted as to those allegations in Counts II and III which claim violations of plaintiff's right to due process.

A. The Bench Warrant

Plaintiff was arrested in August of 1994 and served with a Bench Warrant which he alleges was issued after the expiration of his parole under the January 8, 1990 sentence of six to twenty-four months imprisonment; plaintiff claims that defendants knew that the Bench Warrant was filed after this period and was thus invalid. Fatal to plaintiff's argument is the fact that the Bench Warrant was applied for on September 4, 1991, four days before the expiration of his maximum sentence on September 8. Even though the Warrant itself was not issued until September 13, the initial application was made within the term of the sentence and thus met the requirements for issuance of a valid bench Warrant under Pennsylvania law. See Commonwealth v. Hackman, 623 A.2d 350, 351-52 (Pa. Super. Ct. 1993) (holding that where state officials had previous knowledge of appellant's parole violation, but did not issue a Violation Notice until five days after the expiration of appellant's parole period, the delay did not prejudice appellant and did not invalidate the issuance of the parole violation); Commonwealth v. Dorsey, 476 A.2d 1308, 1310 (Pa. Super. Ct. 1984) (finding that a delay of sixty days between the expiration of the parole period and the issuance of the notice of parole violation did not invalidate the notice). The application was therefore filed in a timely manner under Pennsylvania law, and any delay in issuance was well within the limits set by Pennsylvania courts and did not prejudice plaintiff in any way.

Because defendants were at all times acting pursuant to a valid Bench Warrant, duly filed within the maximum period of plaintiff's January 8, 1990 sentence, there is no evidence to support plaintiff's allegations that defendants fraudulently or knowingly concealed evidence that the Bench Warrant was "not within the statute and regulations." Plaintiff has thus failed to offer any facts which would support a conclusion that defendants concealed evidence or misled the

court at plaintiff's Gagnon hearings as to the validity of the Bench Warrant.

B. Notice and Agency

Plaintiff argues, however, that the failure of defendants to issue a detainer to the Ohio Correctional System after the issuance of the Bench Warrant on September 13, 1991 was itself prejudicial, because this failure to notify plaintiff of the warrant "effectively allowed the parole to expire" and led plaintiff to "believe that he was no longer subject to the conditions of his parole." Plaintiff's Memorandum of Law at 9. For this claim to have merit, plaintiff must be able to show at a minimum that defendants had notice, either actual or constructive, of plaintiff's presence in the Ohio Correctional System between 1991 and 1994. He has failed to do so.

Plaintiff has not offered any evidence that defendants had direct knowledge of his location at any time prior to his arrest in August of 1994. Several times in plaintiff's submissions to the Court he assumes that defendants were given notice, either actual or constructive, of plaintiff's incarceration in the Ohio State Correctional System by way of the notice allegedly given by plaintiff's mother in November, 1990, to Mr. Miller, plaintiff's Probation Officer at the Philadelphia County Parole Office. Plaintiff's "expert," Byron C. Cotter of the Defender Association of Philadelphia, submitted an opinion stating: "In this case, Delaware County, through its agent Mr. Miller, was aware of Mr. Adams' Ohio arrest in or about November of 1990." Opinion of Mr. Cotter at 3. Plaintiff's Memorandum of Law in opposition to the instant motion characterizes the Philadelphia County Parole Office as the "sister agency" to the Delaware County Parole Office, and states that "the defendants, through their agent, Mr. Miller, knew that plaintiff was incarcerated in Ohio." Plaintiff's Memorandum of Law at 8. This

argument demonstrates a basic misunderstanding of agency law by assuming there to be a link between two masters, the Philadelphia and Delaware County Parole Offices. There is absolutely no evidence of any such relationship between the two Parole Offices.

A review of agency principles reveals no rule by which knowledge of the agent of one master, the Philadelphia County Parole Office, might be imputed to the agent of another master, in this case the Delaware County Parole Office. Certainly, the knowledge of an agent can under certain circumstances be imputed to his master. The Restatement (Second) of Agency Section 268 provides that "[u]nless the notifier has notice that the agent has an interest adverse to the principal, a notification given to an agent is notice to the principal if it is given . . . to an agent authorized to receive it," while section 275 provides that, "[e]xcept where the agent is acting adversely to the principal or where knowledge as distinguished from reason to know is important, the principal is affected by the knowledge which an agent has a duty to disclose to the principal or to another agent of the principal to the same extent as if the principal had the information." Moreover, section 381 states that "an agent is subject to a duty to use reasonable efforts to [provide] his principal [with] information which is relevant to affairs entrusted to him." These rules show that knowledge of plaintiff's whereabouts, if provided as alleged to Mr. Miller, the agent of the Philadelphia County Parole Office, can be imputed to the Philadelphia County Parole Office itself as master. However, this is not evidence that the Delaware County Parole Office, an entirely <u>different</u> master organized and operated by a different County, or defendants as its agents, can be said to have received any notice of plaintiff's location. In short, there is absolutely no evidence that any employee of the Philadelphia County Parole Office was an employee or agent of the moving defendants or of their employer, the Delaware County Parole

Office.

Plaintiff has thus failed to establish that defendants had either actual or constructive knowledge of his whereabouts at any time before his arrest in August of 1994. The most that can be said about plaintiff's evidence is that there was a delay in scheduling the Gagnon hearings in his case; however, plaintiff has offered no evidence that this delay was a result of defendants' willful failure to issue a detainer to the Ohio Correctional System. Because defendants never possessed knowledge, whether actual or constructive, that plaintiff had been incarcerated in Ohio, they could not have deprived plaintiff of his right to due process by failing to serve notice of the Bench Warrant on the Ohio prison where plaintiff was incarcerated from 1990 until 1994.

C. Delay in Conducting the Gagnon Hearings

Lastly, plaintiff argues the delay itself in conducting the Gagnon hearings violated his Fourteenth Amendment right to due process. Plaintiff claims that holding the Gagnon hearings approximately seven months after his release from the Ohio Correctional System violated his right to procedural due process and entitles him to relief.

In order to state a cause of action under § 1983 for violation of procedural due process rights, a claimant must demonstrate that the defendants are state actors, and that they deprived him of a constitutionally protected liberty or property interest without due process. See Board of Regents v. Roth, 408 U.S. 564 (1972). It is uncontested that the members of the Delaware County Parole Office are state actors; the question, then, is whether the delay in scheduling the Gagnon hearings in plaintiff's case constituted a deprivation of a constitutionally protected interest without due process.

The law of Pennsylvania on delay in conducting parole revocation hearings is instructive in assessing whether or not any deprivation of a protected right occurred in plaintiff's case. "The sole question in every case of this type is whether the delay from the date of conviction to the date of revocation was reasonable. In assessing reasonableness, we must consider the length of the delay, the reasons for the delay and the prejudice to the defendant." Commonwealth v. Waters, 381 A.2d 957, 959 (Pa. Super. Ct. 1977). See also Commonwealth v. Marchesano, 544 A.2d 1333, 1336 (Pa. 1988) (rejecting lower court holding that prejudice exists whenever a revocation hearing is held after the probation period has expired; stating that prejudice only exists when the delay detracts from the probative value and reliability of the facts considered); Commonwealth v. Call, 378 A.2d 412, 417 (Pa. 1977) (holding that when a parolee concealed his whereabouts and a bench warrant was issued in his absence, the state acted with reasonable promptness in scheduling a parole revocation hearing within one month of the parolee's return to Pennsylvania).

While it is true that a speedy hearing is part of the due process rights accorded a parolee, see Morrisey v. Brewer, 408 U.S. 471, 482 (1972), the Gagnon I hearing could not have been held when the Bench Warrant was issued in 1991 because, as discussed above, defendants had no notice of plaintiff's location at that time. The hearing was held on August 31, 1994, only a few weeks after plaintiff's arrest earlier that month in Delaware County. Plaintiff could have notified the Delaware County Parole authorities of his location in Ohio at any time, as he was required to do under the terms of his parole. Having failed to give any such notice, plaintiff cannot now claim that he was denied due process in the absence of evidence that defendants knew of plaintiff's incarceration in Ohio and failed to schedule the Gagnon hearings at an earlier date. As

discussed above, plaintiff has failed to present any evidence of any such knowledge on defendants' part.

Nor can plaintiff claim that the delay prejudiced his ability to present evidence at his Gagnon I hearing. To the contrary, plaintiff admitted his parole violations at that time and no facts were in contention. Plaintiff has offered no evidence which suggests that the delay in scheduling his Gagnon hearings prejudiced him in any way. Moreover, any delay in scheduling such hearings is attributable to plaintiff's failure to comply with the conditions of his parole, which required him to notify the Delaware County Parole authorities of his whereabouts. Plaintiff has thus failed to offer any evidence which might support a claim that defendants violated his right to due process under the Fourteenth Amendment.

3. Qualified Immunity.

A municipal employee or official is entitled to "good faith" qualified immunity unless it can be shown that the official knowingly violated rights of the plaintiff which were clearly established at the time of the conduct. See Anderson v. Creighton, 483 U.S. 635 (1987); Harlow v. Fitzgerald, 457 U.S. 800 (1982).

As explained above, there is no evidence in this case that defendants violated any of plaintiff's rights. Accordingly, defendants are shielded by qualified immunity from all claims asserted by plaintiff in the Amended Complaint.

D. Conclusion.

For the foregoing reasons, defendants' Motion for Summary Judgment is granted and

judgment is entered in favor of all defendants and against plaintiff.

BY THE COURT:

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JAN E. DUBOIS